

Presentation to the Senate Committee on State Affairs: Health Care Information Security

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HHS Agencies as Covered Entities

- **Texas Medical Privacy Act (TMPA)**
 - All HHS agencies are “covered entities” subject to the applicable privacy requirements of TMPA, Health & Safety Code, Ch. 181.
 - Additionally HHS agencies have contracts with other TMPA “covered entities” (e.g. health care providers, managed care organizations, etc.).
- **Health Insurance Portability and Accountability Act (HIPAA)**
 - HHSC, DSHS and DADS are also HIPAA “covered entities” subject to privacy, security and breach notice standards.
 - HHSC, DSHS and DADS have business associate agreements with business associates acting on behalf of each agency with HIPAA Protected Health Information (PHI).
 - DSHS acts as a business associate for certain substance use disorder service providers.
- **Licensing Agencies**
 - DSHS, DADS and DFPS issue licenses for certain covered entities (e.g., hospitals, nursing facilities, child care).

HHSC Protected Health Information

- HHSC uses or discloses “protected health information” (PHI) in various ways:
 - **Benefit Program PHI:**
 - Medicaid, CHIP and TANF eligibility and claims data
 - Managed care encounter data
 - Medicaid Eligibility Health Information System (MEHIS)
 - Data analytics
 - **Data Use Agreements (contracts) between HHSC and its vendors for purposes of:**
 - Claims administration
 - Eligibility determination
 - Cloud or system maintenance services

Safeguarding PHI

- HHS Information Security Program
 - Aligned with National Institute of Standards and Technology (NIST) which has established policies, standards and guidelines for information technology and security.
- HHS Privacy Program
 - Chief Privacy Officer hired in August, 2014
 - Provides strategic direction for compliance with federal and state privacy laws and regulations, identification and mitigation of privacy risks.
 - Coordinates standards for information privacy across HHS agencies.
- HHS Procurement and Contracting
 - HHSC's contracts include requirements for vendors to safeguard PHI.

HB 300 Implementation

- HB 300, 82nd Legislature, 2011 strengthened the requirements for protecting the privacy and security of individually identifiable health information in Texas:
 - Required covered entities to provide employee training regarding state and federal law concerning PHI as it relates to the covered entity's course of business and each employee's scope of employment within 60 days after hire and at least two years thereafter.
 - HHSC employees are required to receive training no later than 60 days from hire date.
 - Required each state agency that receives consumer complaints regarding PHI to submit the consumer complaint information to Office of the Attorney General (OAG).
 - HHSC is developing an internal process for tracking and reporting consumer complaints to OAG.
 - Required the Texas Health Services Authority (THSA) to develop privacy and security standards for the electronic exchange of health information and for HHSC to promulgate rules.
 - In January 2013, HHSC promulgated Privacy and Security Standards for the Electronic Exchange of Health Information by covered entities, regulating a broad range of information types, healthcare provider and healthcare facilities, including required compliance with HIPAA and TMPA.

HB 300 Implementation

- Required HHSC participation on Health Information Technology Task Force, regarding informed consent for sharing electronic PHI, patient access to and use of electronically maintained and disclosed PHI for personal health and coordination of health care services, and other issues related to exchange of PHI.
- Required several reports to the Legislature:
 - January, 2013: Unsustainable Covered Entities recommendations, submitted to Legislature
 - December, 2013: New Developments in Safeguarding Protected Health Information Report, submitted to Legislature
 - September, 2014: Audits and Risk Analyses of Covered Entities
 - December, 2014: New Developments in Safeguarding Protected Health Information Report due
 - January, 2014: HHSC participates in a Health Information Technology Task Force, developing recommendations for informed consent for sharing, access and use and disclosure of electronic PHI

Next Steps

- Establish system-wide policies and protocols to ensure compliance with HB 300. These will address issues such as:
 - Training for HHS employees that is timely, applicable, effective and verified.
 - Client notices that are applicable, plain meaning and updated annually or sooner, as needed.
- Seek opportunities for federal funding for TMPA enforcement in coordination with THSA and Texas Department of Insurance (TDI).